

REMARKS

Applicants have studied the Office Action dated October 11, 2005. It is submitted that the application, as previously amended, is in condition for allowance. Claims 19, 25, and 31-47 are pending. Reconsideration and allowance of the pending claims in view of the above amendments and the following remarks is respectfully requested.

Rejection under 35 U.S.C. §103(a)

In items 5-6 of the Office Action, the Examiner rejected claims 19, 25, and 31-47 under 35 U.S.C. § 103(a) as being unpatentable over Seymour et al. (U.S. Patent No. 6,871,190) in view of Ojha et al. (U.S. Patent No. 6,598,026).

Before discussing the prior art in detail, it is believed that a brief review of the invention as claimed, would be helpful. Independent claims 19, 25, and 31 have been amended to clarify the present invention. Independent claims 19, 25, and 31 recite, *inter alia*:

determining if a current bid from the auction site is below a maximum limit permitted, and in response to the current bid being below performing the following without further user interaction;

placing at least two new bids including a first bid for the product at a first of the plurality of auction sites and a second bid for the product at a second of the plurality of auction sites in order for at least two bids to be active on at least two of the plurality of auction sites at the same time;

determining if at least one of the new bids has been accepted and in response to at least one of the new bids being accepted, canceling outstanding bids at other auction sites of the plurality of auction sites where the at least one of the product and service is available; and

determining if time has expired on any of the at least two new bids for a given auction site of the plurality of action sites and in response to the time expiring, canceling any outstanding bid for the given auction site.

Support for this amendment is found in the application as originally filed on pages 16 and 17. No new matter has been added. The present invention solves the problem of

the prior art by allowing purchasers to bid on goods/services at multiple auction sites automatically and **simultaneously**. The present invention enables communication with multiple auction databases where the interface to each auction database is different. The invention simultaneously accesses a plurality of auction sites through use a configuration profile, places a bid for a product, and if the bid is accepted at any of the plurality of auction sites, cancels outstanding bids at the other auction sites.

The Seymour et al. reference discloses an interactive system that utilizes buying and selling strategies to perform auctions over a communication network. In Seymour et al., a buyer uses a bidding agent to survey all available auction sites that offer an item being sought and are within a set of user input parameters. Seymour et al., col. 7, lines 20-22. Once the sites are found, they are ranked according to a rating system. Seymour et al., col. 7, lines 54-67. Specifically, the seller site at which the next auction is due to commence is always given the highest ranking. Seymour et al., col. 7, lines 60-61.

Importantly, Seymour et al. are not concerned with and do not teach or suggest bidding on an item at two sites simultaneously. Seymour et al. go through the process of creating the ranking list so that it will have an order to which it will **sequentially** access sites within the compiled list of sites. Seymour et al., col. 8, lines 1-3. To be clear, Seymour et al. do not deal with a second auction site until it has been outbid at the first site and that auction is complete. Seymour et al., col. 8, lines 64-67 and See FIG. 6C, step 518. Alternatively, if the bid is accepted, the bidding agent informs the user of his purchase and the process stops. Seymour et al., col. 8, lines 53-60 and FIG. 6C, step 516.

Clearly, and as the Examiner correctly recognizes on page 4 of the Office Action, Seymour et al. do not show in response to the new bid being accepted, **cancelling outstanding bids at other auction sites** as recited in claims 19, 25, and 31 of the instant application. The entire gist of Seymour et al. is to locate relevant sites and rank them so that auctions can be entered one at a time.

The system in Ojha et al. is directed to a method and apparatus for brokering transactions from a plurality of sellers and a plurality of buyers. Each of the sellers and buyers has access to a proprietary database where all the items for the transaction are listed. See Ojha's Summary of the Invention, and more specifically col. 2, lines 47-62, col. 3, lines 59-60, and col. 9, lines 37-38. Accordingly, the method and system as taught by Ojha et al. is a centralized database with separate logon's and privileges. In contrast, the present invention works with existing auction sites such as eBay and Yahoo where each auction site not only has a separate database for listing items and services in the auction at the given site, but also each auction site has a distinct user interface. Further Ojha et al. requires user interaction to complete the negotiation process of buying and selling. See Ojha at col. 12, lines 29-44. The present invention recites automatically completing the auction process by and "performing the following without further user interaction."

Contrary to the Examiner's suggestion, on page 4 of the Office Action, that combining Ojha et al. with Seymour et al. would have been obvious, in fact, the combination of the two would render the invention of Seymour et al. inoperative. The Federal Circuit has consistently held that when a §103 rejection is based upon a modification of a reference that destroys the intent, purpose or function of the invention disclosed in the reference, such a proposed modification is not proper and the *prima facie* case of obviousness can not be properly made. See *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Here the intent, purpose and function of Seymour et al. is to enter auctions by sequentially following a ranking of auction sites, i.e., participate in only one auction at a time. Even if, arguendo, Ojha et al. show canceling outstanding bids at other auction sites, adding that element to Seymour et al. would destroy the intent, purpose, and function of Seymour et al. because there is only one auction being participated in and canceling that auction would always result in not purchasing the desired item.

The Examiner goes on to state that it would have been obvious to modify Seymour et al. with Ojha et al. "*for the purpose of eliminating the risk that the bidder fails to pursue some of those bids that may have higher approximate price estimated by the bidder.*" The Examiner has not, however, shown where in either of the cited references this has

been suggested. When there is no suggestion or teaching in the prior art, the suggestion can not come from the Applicant's own specification. The Federal Circuit has repeatedly warned against using the Applicant's disclosure as a blueprint to reconstruct the claimed invention out of isolated teachings of the prior art.¹ Because Seymour et al. focus on developing bidding strategies to be employed at a single auction only, there is no suggestion for participating in multiple auctions simultaneously, and, therefore, certainly no suggestion to cancel outstanding bids at other auction sites.

One of skill in the art would not be motivated to seek out Ojha et al. and expand the basic premise of Seymour et al. to utilize an aspect of Ojha et al. that is allegedly found in the present invention.

Further, Ojha et al., is a customized centralized database for aggregating listing information from several different buyers and sellers. The present invention eliminates the need to create a proprietary centralized database which includes information from various participating buyers as taught by Ojha et al. for brokering the sale negotiations of multiple products. Because the present invention is directed to buyers bidding on desired items placed at auction by sellers across multiple auction web sites, there is no reason for the present invention to maintain a centralized database of the various buyers or a database accessible by various sellers. The present invention allows a single user to log onto multiple auction websites **simultaneously** and to **simultaneously bid on items at different action sites and "in response to the new bid being accepted, canceling outstanding bids at other auction sites of the plurality of auction sites where the at least one of the product and service is available."** The ability to simultaneous log on to multiple auction websites and to simultaneously bid on items at different auction websites is no where suggested or taught in Ojha taken alone and/or combined with Seymour.

¹ See MPEP § 2143 and Grain Processing Corp. v. American Maize-Products, 840 F.2d 902, 907, 5 USPQ2d 1788 1792 (Fed. Cir. 1988) and In re Fitch, 972 F.2d 160, 12 USPQ2d 1780, 1783-84 (Fed. Cir. 1992).

It is accordingly believed to be clear that Seymour et al., whether taken alone or in any combination with Ojha et al., neither shows nor suggests the features of claims 19, 25, and 31. Claims 19, 25 and 31 are, therefore, believed to be patentable over the art. The dependent claims are believed to be patentable as well because they all are ultimately dependent on either claim 19, 25 or claim 31.

CONCLUSION

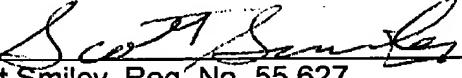
Applicant acknowledges the continuing duty of candor and good faith to disclosure of information known to be material to the examination of this application. In accordance with 37 CFR §1.56, all such information is dutifully made of record. The foreseeable equivalents of any territory surrendered by amendment are limited to the territory taught by the information of record. No other territory afforded by the doctrine of equivalents is knowingly surrendered and everything else is unforeseeable at the time of this amendment by the Applicants and their attorneys.

Applicants respectfully submit that all of the grounds for rejection stated in the Examiner's Office Action have been overcome, and that all claims in the application are allowable. No new matter has been added. It is believed that the application is now in condition for allowance, which allowance is respectfully requested.

PLEASE CALL the undersigned if that would expedite the prosecution of this application.

Respectfully submitted,

Date: January 11, 2006

By: 
Scott Smiley, Reg. No. 55,627
Attorney for Applicants

By: 
Jon Gibbons, Reg. No. 37,333
Attorney for Applicants

FLEIT, KAIN, GIBBONS, GUTMAN BONGINI & BIANCO P.L.
551 N.W. 77th Street, Suite 111
Boca Raton, FL 33487
Tel (561) 989-9811
Fax (561) 989-9812